

115TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
115-169

REGULATIONS FROM THE EXECUTIVE IN  
NEED OF SCRUTINY ACT OF 2017

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
WITH MINORITY VIEWS

TO ACCOMPANY

S. 21

TO AMEND CHAPTER 8 OF TITLE 5, UNITED STATES CODE, TO  
PROVIDE THAT MAJOR RULES OF THE EXECUTIVE BRANCH  
SHALL HAVE NO FORCE OR EFFECT UNLESS A JOINT  
RESOLUTION OF APPROVAL IS ENACTED INTO LAW



OCTOBER 16, 2017.—Ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

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Calendar No. 239

115TH CONGRESS } 1st Session }	SENATE	{ REPORT 115-169
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REGULATIONS FROM THE EXECUTIVE IN NEED OF  
SCRUTINY ACT OF 2017

OCTOBER 16, 2017.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 21]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 21) to amend chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The Regulations from the Executive in Need of Scrutiny Act of 2017 (REINS Act) revises the Congressional Review Act of 1996

(CRA) to increase accountability and transparency in the Federal regulatory process.<sup>1</sup> The CRA, which originated from a desire to instill more active congressional control over a rapidly growing body of Federal regulation, created an expedited process for Congress to review and disapprove any rule after it is issued by a Federal agency.<sup>2</sup> The REINS Act would amend the CRA by adding a mandatory congressional approval procedure for major agency rules before they can go into effect.<sup>3</sup> By requiring prior congressional approval for major rules, regulations will be more carefully crafted and the regulatory process will be more accountable to the American people.

## II. BACKGROUND AND THE NEED FOR LEGISLATION

Under the CRA, a major rule cannot take effect for at least 60 days after a report on the rule is submitted to both Houses of Congress and the rule itself is published in the *Federal Register* (whichever occurs later).<sup>4</sup> However, unless Congress acts to formally disapprove the rule, it automatically goes into effect.<sup>5</sup> The REINS Act would reverse this process for major rules, preventing implementation of major rules that do not receive explicit approval by Congress. A major rule is one that the Office of Information and Regulatory Affairs (OIRA) determines will have a likely annual effect of \$100 million or more on the economy, cause a major increase in costs or prices, or have significant international anti-competitive effects.<sup>6</sup>

The costs and burdens associated with Federal regulatory activity have increased significantly over the last 40 years.<sup>7</sup> However, despite an increasing regulatory burden,<sup>8</sup> the legislative structure has not meaningfully changed to commensurately increase accountability. Over the course of the twentieth century, there has been an escalation of congressional delegation of regulatory authority to Federal agencies.<sup>9</sup> By delegating broad regulatory authority to Federal agencies, Congress has lost legislative control and political accountability over the exercise of that delegated regulatory authority.<sup>10</sup>

<sup>1</sup> See Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (codified at 5 U.S.C. §§ 801-808); see also Regulations from the Executive in Need of Scrutiny Act of 2017, S. 21, 115th Cong. (2017) (CRA was included as part of the Contract with America Advancement Act of 1996).

<sup>2</sup> H.R. Rep. No. 114-214, pt. 1, at 7 (2015).

<sup>3</sup> S. 21, 115th Cong. (2017).

<sup>4</sup> See 5 U.S.C. §§ 801-808 (2012).

<sup>5</sup> *Id.*

<sup>6</sup> See 5 U.S.C. § 804(2) (2012).

<sup>7</sup> See Jonathan H. Adler, *Placing “Reins” On Regulations: Assessing the Proposed REINS Act*, 16 N.Y.U. J. Legis. & Pub. Pol’y 1, 2-36 (2013).

<sup>8</sup> Aggregate measurement of federal regulatory scope and cost is difficult, though there have been attempts at using a structural model to estimate costs, as well as machine-learning methods to “read” the extensive Code of Federal Regulations to count the number of regulations. See Bentley Coffey et al., *The Cumulative Cost of Regulations* (Mercatus Ctr., Working Paper, April 2016), <https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf> (“Had regulation been held constant at levels observed in 1980, our model predicts that the economy would have been 25 percent larger by 2012 . . . or about \$13,000 per capita); see also Omar Al-Ubaydli & Patrick A. McLaughlin, *RegData: A Numerical Database on Industry-specific Regulations for All United States Industries and Federal Regulations, 1997-2012*, 11 Reg. & Governance 1, 109-123 (2017).

<sup>9</sup> Adler, *supra* note 7.

<sup>10</sup> *Id.*

The purpose of the CRA was to “redress the balance [of power], reclaiming for Congress some of its policymaking authority.”<sup>11</sup> The sponsors observed that Congress was increasingly delegating its legislative functions, effectively “abdicat[ing] its constitutional role.”<sup>12</sup> Previous Congresses have contemplated other means of disapproving of Executive actions vis-à-vis delegated powers, employing various means to assert authority over Federal agencies and restore legislative control.<sup>13</sup> These means have included everything from ordinary congressional oversight activities to the use of the unicameral legislative veto, which goes back to 1932.<sup>14</sup> On the latter tool, “the Supreme Court struck down any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws.”<sup>15</sup> The CRA outlines a process similar to a legislative veto, but which requires participation of both Houses of Congress and the President.

Despite its conceptual intentions, the CRA has not had much success reigning in the pace of regulations promulgated by Federal agencies.<sup>16</sup> Since the enactment of the CRA, agencies have issued more than 85,000 new final Federal regulations,<sup>17</sup> over 1,500 of which are major rules.<sup>18</sup> However only a small fraction have received some form of Congressional action via a Congressional resolution—to date only 20 have been passed by both chambers and sent to the President; of those, only 15 have been signed into law.<sup>19</sup>

One limitation of the CRA is that it forces Congress to take its own initiative to overturn any regulations of which it disapproves.<sup>20</sup> Additionally, the CRA essentially requires a super-majority in Congress to overturn any regulations because a sitting President is likely to veto any joint congressional resolutions meant to disapprove of regulations promulgated by his own administration.<sup>21</sup>

There is a need for further reform of the regulatory process. Under the CRA, unless Congress disapproves of a rule, the rule

<sup>11</sup> 142 Cong. Rec. 96, 6922, 6926 (1996) (Joint Explanatory Statement of House and Senate sponsors for CRA).

<sup>12</sup> *Id.*

<sup>13</sup> See H.R. Rep. No. 114–214 at 8.

<sup>14</sup> See Act of June 30, 1932, Pub. L. No. 72–212, ch. 314, § 407, 47 Stat. 382, 414 (repealed 1966); see also James Abourezk, *The Congressional Veto: A Contemporary Response to Executive Encroachment on Legislative Prerogatives*, 52 Ind. L. J. 323, 324 n.5 (1977) (cited in *I.N.S. v. Chadha*, 103 S. Ct. at 2793 (White, J., dissenting)); Laurence H. Tribe, *The Legislative Veto Decision: A Law By Any Other Name?*, 21 Harv. J. on Legis. 1, 3–4, 28 (1984).

<sup>15</sup> 142 Cong. Rec. 96, 6922, 6926 (1996); see also *I.N.S. v. Chadha*, 462 U.S. 919 (1983).

<sup>16</sup> See H.R. Rep. No. 114–214 at 8; see also Adler, *supra* note 7, at 21.

<sup>17</sup> See U.S. Fed. Reg., <https://www.federalregister.gov/> (last visited Sept. 13, 2017) (search Mar. 30, 1996 through Sept. 13, 2017).

<sup>18</sup> See U.S. Gov’t Accountability Off., <http://www.gao.gov/legal/congressional-review-act/overview> (last visited Sept. 13, 2017) (search Mar. 30, 1996 through Sept. 13, 2017).

<sup>19</sup> See generally S.J. Res. 8, 114th Cong. (2015–2016); S.J. Res. 22, 114th Cong. (2015–2016); S.J. Res. 23, 114th Cong. (2015–2016); S.J. Res. 24 114th Cong. (2015–2016); H.J. Res. 88, 114th Cong. (2015–2016) (the five vetoed resolutions); see also S.J. Res. 6, 107th Cong. (2001) (enacted as Pub. L. No. 107–5); H.J. Res. 41, 115th Cong. (2017) (enacted as Pub. L. No. 155–4); H.J. Res. 38, 115th Cong. (2017) (enacted as Pub. L. No. 155–5); H.J. Res. 40, 115th Cong. (2017) (enacted as Pub. L. No. 115–8); H.J. Res. 37, 115th Cong. (2017) (enacted as Pub. L. No. 155–11); H.J. Res. 44, 115th Cong. (2017) (enacted as Pub. L. No. 155–12); H.J. Res. 57, 115th Cong. (2017) (enacted as Pub. L. No. 115–13); H.J. Res. 58, 115th Cong. (2017) (enacted as Pub. L. No. 115–14); H.J. Res. 42, 115th Cong. (2017) (enacted as Pub. L. No. 115–17); H.J. Res. 69, 115th Cong. (2017) (enacted as Pub. L. No. 115–20); H.J. Res. 83, 115th Cong. (2017) (enacted as Pub. L. No. 115–21); S.J. Res. 34, 115th Cong. (2017) (enacted as Pub. L. No. 115–22); H.J. Res. 43, 115th Cong. (2017) (enacted as Pub. L. No. 115–23); H.J. Res. 67, 115th Cong. (2017) (enacted as Pub. L. No. 115–24); H.J. Res. 66, 115th Cong. (2017) (enacted as Pub. L. No. 115–35) (the fifteen resolutions overturning rules and signed into law).

<sup>20</sup> Adler, *supra* note 7, at 19.

<sup>21</sup> *Id.*

goes into effect without any congressional action.<sup>22</sup> Therefore, as a matter of course, even rules to which many in Congress (perhaps even a majority) may object go unchallenged, and individual members can hold at arm's length any undesirable outcomes—avoiding “a degree of visible responsibility.”<sup>23</sup> Legal scholar Laurence Tribe described that “through rulemaking . . . exercises of delegated authority change legal rights and privileges no less than do full-fledged laws.”<sup>24</sup> This means that changes to and creation of new Federal regulations carry the full force and effect of law, and can proceed without the active participation of the Congress, which may have only vaguely authorized regulation in a particular area months, years, or decades prior.

The REINS Act revises the CRA by inverting this process for major rules by preventing them from going into effect without Congress' explicit approval. Under the REINS Act, any new major rule would require Congress to pass within 70 session or legislative days of the rule being submitted to Congress, and the President to sign, a joint resolution approving the new major rule before it could take effect. Accordingly, the REINS Act, like the CRA, would require approval by both Houses of Congress and presentment to the President. Then-Judge Stephen Breyer and constitutional law professor Laurence Tribe have opined that a congressional approval mechanism for regulations—similar to that outlined in the REINS Act—would be constitutional.<sup>25</sup>

The REINS Act provides for a few exceptions to its process. First, a major rule may take effect for a 90-day period without congressional approval if the President determines it is necessary under certain circumstances. Second, any rules affecting budget authority, outlays, or receipts are “assumed to be effective unless [they are] not approved in accordance” with this bill.

Finally, the REINS Act ensures Congress has the ability to efficiently review major rules before they take effect by providing an expedited process. This process includes a prohibition on amendments to congressional joint resolutions of approval, a limited period of up to 15 session days for committees to discharge such resolutions, limited time allowed for floor debate, and a deadline by which both chambers of Congress must take a vote on final passage of the resolution in question.<sup>26</sup>

These processes are designed to increase Congress' accountability for the content of major rules and foster more deliberation before major rules take effect.

### III. LEGISLATIVE HISTORY

Senator Rand Paul (R-KY) introduced S. 21 on January 4, 2017, with Senators Roy Blunt (R-MO), Todd Young (R-IN), Mike Rounds (R-SD), Chuck Grassley (R-IA), Cory Gardner (R-CO), Joni Ernst (R-IA), Tom Cotton (R-AR), Shelly Moore Capito (R-WV), Steve Daines (R-MT), John McCain (R-AZ), Tim Scott (R-SC), Ted Cruz (R-TX), John Barrasso (R-WY), Mike Crapo (R-ID), John Thune (R-SD), James M. Inhofe (R-OK), Deb Fischer (R-

<sup>22</sup> See 5 U.S.C. §§ 801–808 (2012).

<sup>23</sup> Stephen Breyer, *The Legislative Veto After Chadha*, 72 Geo. L.J. 785, 793–96 (1984).

<sup>24</sup> Tribe, *supra* note 14, at 9.

<sup>25</sup> Breyer, *supra* note 23, at 28; see also H.R. Rep. No. 114–214 at 11.

<sup>26</sup> S. 21, 115th Cong. (2017).

NE), Ron Johnson (R-WI), John Boozman (R-AR), Dean Heller (R-NV), Dan Sullivan (R-AK), Michael B. Enzi (R-WY), Mike Lee (R-UT), Pat Roberts (R-KS), Ben Sasse (R-NE), Jerry Moran (R-KS), and Bill Cassidy (R-LA). Senators Roger Wicker (R-MS), John Cornyn (R-TX), James E. Risch (ID), David Perdue (R-GA), Rob Portman (R-OH), Jeff Flake (R-AZ), John Kennedy (R-LA), and Johnny Isakson (R-GA) later joined as cosponsors.

The bill was referred to the Committee. The Committee considered S. 21 at a May 17, 2017 business meeting.

The Committee ordered S. 21 reported favorably on May 17, 2017, by a roll call vote of 8 yeas to 6 nays. Senators voting in the affirmative were Johnson, McCain, Portman, Paul, Lankford, Enzi, Hoeven, and Daines. Senators voting in the negative were McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris. For the record only, Senator Carper voted nay by proxy. Consistent with Committee Rule 11, the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

#### IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

##### *Section 1. Short title*

This section provides the bill's short title, the "Regulations from the Executive in Need of Scrutiny Act of 2017."

##### *Section 2. Purpose*

This section describes the bill's purpose as increasing Congressional responsibility in the regulatory process. It states that despite the "Constitution grant[ing] all legislative powers to Congress," such power have been increasingly delegated to non-legislative authorities. By requiring Congress to explicitly vote to approve major regulations, the bill will result in more accountability to the public for the regulations with which they must comply.

##### *Section 3. Congressional review of agency rulemaking*

This section amends sections 801 to 807 of the CRA to reflect new requirements for promulgating a Federal regulation as well as new review and approval mechanisms for Congress to consider rules.

The bill amends Section 801 subparagraph (a)(1)(A) of the CRA to require the agency submitting a rule for review to include, in the *Federal Register* and in a report to Congress and the Comptroller General, additional information and analysis pertaining to the rule. Subparagraph (a)(2)(A) adds a requirement that the Comptroller General provide a report to Congress on any major rules which includes "an assessment of whether the major rule imposes any new limits or mandates on private-sector activity." Subparagraph (a)(2)(B) requires Federal agencies to information to the Comptroller General relevant to the major rule report l.

Subparagraph (a)(3) stipulates that a major rule's effective date is when a joint resolution on the rule is enacted, or the date included in the rule, whichever is later.

Subparagraph (a)(4) stipulates that nonmajor rules take effect only if they are submitted to Congress and Congress does not disapprove of the rule.

Subparagraph (a)(5) prohibits Congress from approving a major rule beyond the period specified in this bill.

Subsection (b) states that Congress must enact a joint resolution of approval within 70 session days from receipt of a major rule for it to take effect.

Subsection (c) allows the President to temporarily put into effect (for up to 90 days) a major rule if he or she makes a determination that the rule is needed due to: an imminent threat to health and safety; enforcement of criminal laws; national security; or implementation of international trade agreement. This determination does not affect the resolution procedures in Section 802.

Subsection (d) provides a new review period for rules submitted during the last 60 session days (in the Senate) or legislative days (in the House) before a Congress adjourns, all the way through to the convening of the next session. The new review window begins as if the rule is first published or submitted on the 15th session day (Senate) or legislative day (House) of the new session and otherwise treated the same as any other rule.

Subsections 802(a) through (h) describe the specific requirements for the content of the joint resolution and expedited procedures related to a resolution of approval for a major rule. They require the majority leader in each chamber to introduce a joint resolution (after receipt of a major rule's report) within three session or legislative days, whichever is applicable, with no amendments allowed at any point. It is then referred to the committee(s) of jurisdiction which has 15 (session/legislative) days to consider the resolution. The subsections further prescribe specific floor procedures in each chamber which limit debate, prevent moving on to other business without disposal of the resolution, or postponing a vote on final passage beyond the allowed review period described in section 801.

Section 803 describes the disapproval procedure for nonmajor rules. This section is largely based on the existing authorities in 5 U.S.C. § 802. Under this section, Congress is given a limited period of time in which to enact a joint resolution of disapproval for a nonmajor rule, otherwise the rule goes into effect by default. The amount of time committees are given to consider and report the rule is changed from 20 calendar days (in current law) to 15 session days which may be the same, longer, or shorter depending on scheduling. This section also describes procedures for floor consideration, including what motions are privileged and allowable time for debate.

Section 804 amends the existing section to provide for new definitions for "nonmajor rule" and "submission or publication date," while retaining definitions for "Federal agency," "major rule," and "rule."

Section 805 adds to the existing section to clarify the scope of allowable judicial review. It states that courts may review whether an agency complied with the requirements under this chapter for a rule to take effect. It also clarifies that should Congress enact a resolution of approval of a rule, that resolution should not be interpreted as changing or expanding the regulatory authority of an agency nor will it enter the judicial record except on the question of whether a rule is in effect.

Section 806 exempts rules and policies concerning monetary policy and the Federal Reserve from this chapter.



Section 807 is the same as existing Section 808 and allows for certain rules (dealing with hunting, fishing, or camping) to take effect when the agency determines they should. The same applies to rules where the agency finds good cause that notice and comment are “impracticable, unnecessary, or contrary to the public interest” and explains its reasoning for doing so in the rule itself.

*Section 4. Budgetary effects of rules subject to section 802 of title 5, United States Code*

This section amends the Balanced Budget and Emergency Deficit Control Act of 1985 to state that major rules, which otherwise require approval in this bill, that are budgetary in nature are treated as in effect unless not approved under the major rules procedures.

*Section 5. Government Accountability Office study of rules*

This section requires the Comptroller General to submit a study within one year of enactment that identifies the number of rules in effect, how many of those rules are major, and an estimate of their aggregate economic cost.

## V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

## VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 14, 2017.

Hon. RON JOHNSON,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 21, the Regulations from the Executive in Need of Scrutiny Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

KEITH HALL.

Enclosure.

*S. 21—Regulations from the Executive in Need of Scrutiny Act of 2017*

Summary: Under current law, a final federal rule can take effect unless the Congress enacts a joint resolution of *disapproval*. In contrast, S. 21 would require the Congress to enact a joint resolution of *approval* before any major rule could take effect. Thus under S. 21 new major regulations would depend on future legislation.

CBO and the staff of the Joint Committee on Taxation (JCT) cannot determine the budgetary effect of making all future major rules subject to Congressional approval, but we expect that, in the ab-

sence of subsequent legislative action affecting those rules, enacting S. 21 would have significant effects on both direct spending and revenues. Pay-as-you-go procedures apply because enacting S. 21 would affect direct spending and revenues.

CBO cannot determine whether enacting S. 21 would increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

CBO expects that implementing S. 21 also could have a significant impact on spending subject to appropriation, although we cannot determine the magnitude of that effect.

CBO expects that S. 21 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government:

### *Background*

The Congressional Review Act (CRA) of 1996 requires federal agencies to submit final rules to the Congress and the Comptroller General before they may take effect. Final rules may be annulled by the Congress if a joint resolution of disapproval is enacted into law. S. 21 would amend current law to require instead that the Congress enact a joint resolution of approval before any major rule may take effect, thereby making implementation of major rules contingent on future Congressional action.

The CRA defines a major rule as one that the Office of Management and Budget (OMB) finds has resulted in or is likely to result in:

- An annual effect on the economy of \$100,000,000 or more;
- A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>1</sup>

S. 21 would establish special Congressional procedures and explicit timelines for enacting a joint resolution of approval for major rules. Under the bill, if a joint resolution of approval is not enacted within 70 legislative (or session) days of the Congress receiving the major rule and an accompanying report from a federal agency, the rule would not take effect. Further, the Congress could not reconsider a joint resolution of approval relating to that rule in the same Congress. However, a major rule could take effect for one 90-calendar-day period without Congressional approval if the President determines, via an executive order, that it was necessary for one of four reasons: (1) to respond to an imminent threat to health or safety, (2) to enforce criminal laws, (3) to protect national security, or (4) to implement an international trade agreement.

Historical data show that federal agencies published 117 major rules in 2016, and 84 major rules, on average, over the past five calendar years.<sup>2</sup> Major rules published in recent years include ones that established standards for the reliability of critical infrastruc-

<sup>1</sup> See 5 USC § 804(2).

<sup>2</sup> GAO Federal Rules Database, [www.gao.gov/legal/congressional-review-act](http://www.gao.gov/legal/congressional-review-act).

ture, set Medicare payment rates for inpatient psychiatric facilities, and established national ambient air quality standards for ozone pollution. However, looking to recent major rules as a way to estimate the number or scope of future major rules that would be affected by S. 21 may not be a good guide to what would happen under the bill because agencies might change course if the bill was enacted.

Because major rules are issued to implement current law, the budgetary effects of anticipated rules are reflected in CBO's baseline projections. For example, annual rules establish new payment rates for a variety of Medicare services that reflect changes in the price indices used for those services under current law. Those rules often result in an increase in payment rates and thus an increase in spending, which are incorporated in the baseline.

Under the Deficit Control Act, which governs the contents of the baseline, actions that are contingent on future Congressional action are generally not included in CBO's projections. S. 21 would amend that Act to require that CBO continue to assume that any planned major rule will go into effect, unless the rule has already been promulgated and the Congress has not enacted a resolution of approval within the specified 70-day period. (Without that provision amending the Deficit Control Act, S. 21 would result in baseline projections that did not reflect the budgetary impact of major rules.)

Under S. 21, CBO's baseline projections would continue to include the budgetary impact of major rules even though future Congressional action would be necessary to approve them. For example, if S. 21 is enacted, baseline projections would continue to reflect the assumption that payment rates and related federal spending for Medicare providers would rise over time, even though raising those rates would require future Congressional action. Accordingly, a Congressional resolution of approval for a major rule raising such rates would be estimated as having no cost relative to CBO's baseline projections. (CBO's subsequent baseline projections would be updated to exclude the budgetary impact of the proposed rule if it is not approved.)

#### *Impact on direct spending*

To assess the budgetary effects of S. 21, CBO considered the costs and savings that would be realized if anticipated major rules do not take effect. The consequences would vary tremendously because the budgetary impact of different rules varies considerably.

Preventing some major rules from taking effect would result in costs to the federal government, while preventing others would result in savings. On net, CBO estimates that enacting S. 21 would probably have a significant effect on direct spending (more than \$500,000), but we cannot determine the magnitude or sign of those changes for any year or over time.

Many major rules that occur routinely under current law are related to the government's health care programs, in particular Medicare. For example, some rules establish annual updates to payment rates for services provided by hospitals, physicians, and other Medicare providers. Enacting S. 21 would freeze payment structures for those providers at current levels pending future Congressional actions. Similarly, payment rates (such as the annual benefit

amount for each individual) under some other federal programs might also be frozen under the bill in the absence of future Congressional actions. CBO cannot estimate the net impact of all such changes.

*Impact on revenues*

Enacting S. 21 would also affect tax revenues, and JCT expects that preventing regulations from going into effect could reduce collections of revenues in some cases and increase collections in other cases. JCT cannot determine the sign or magnitude of the possible effects on revenues.

*Impact on spending subject to appropriation*

S. 21 also would affect programs funded through the annual appropriation process. However, CBO cannot determine the magnitude of such effects. For example, if the major rules issued by the Environmental Protection Agency could not take effect, spending by the agency would decline, assuming future appropriations were reduced accordingly.

The legislation also would require the Government Accountability Office (GAO) to prepare a study on the rules and their economic cost. Based on information from agencies and on similar GAO reports, CBO estimates that completing the study would cost less than \$500,000 over the next few years.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Pay-as-you-go procedures apply to S. 21 because enacting the legislation would affect direct spending and revenues. CBO and JCT cannot determine the sign or magnitude of those effects.

**Intergovernmental and private-sector impact:** CBO expects that S. 21 would impose no intergovernmental or private-sector mandates as defined in UMRA. By requiring major rules to be approved by a joint resolution of Congress and potentially delaying or halting the implementation of those rules, the bill could affect public or private entities in a number of ways, including slowing reimbursements and eliminating or changing regulatory requirements. Although the costs and savings tied to those individual effects could be significant, CBO has no basis for estimating either the overall direction or magnitude of those effects on public or private entities because of uncertainty about the nature and number of regulations affected.

Estimate prepared by: Federal costs: Kathleen Gramp; Impact on state, local, and tribal governments: Zachery Byrum; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

## VII. MINORITY VIEWS

MINORITY VIEWS OF SENATORS CLAIRE MCCASKILL, THOMAS R. CARPER, HEIDI HEITKAMP AND MAGGIE HASSAN

While it is important for Congress to conduct regular oversight of the federal rulemaking process, S. 21, the Regulations in Need of Scrutiny Act of 2017 (REINS) is a significant departure from the

longstanding separation of powers between the Legislative and Executive branches that would abolish the regulatory process for major rules and undermine much-needed protections for the American people.

Critics of the federal rulemaking process raise a variety of concerns. Most observers agree, for example, that the process needs to be more open, transparent and accessible. Some argue that the process is stacked to favor inaction, denying Americans the protections they need and deserve. Others argue that agencies are given too much authority to regulate and do not do enough to take competing interests into account when promulgating regulations. However, rather than thoughtfully seeking to resolve these, or any other issue raised by stakeholders, the REINS Act would create additional bureaucracy and political considerations into a process intended to be based on sound and thorough analysis.

The REINS Act would require both houses of Congress to approve any major rule within a 70 day window. Absent Congressional action within 70 days, the rule would not take effect. This is a reversal from current law—the existing Congressional Review Act process allows a regulation takes effect unless Congress acts to affirmatively *block* the proposal.<sup>1</sup>

Nonpartisan observers have long opposed this idea, and the concept may be unconstitutional. As early as 1977 the nonpartisan Administrative Conference of the United States (ACUS) recommended that, “Congress should not, in general legislation or as a routine practice, provide for prior submission of agency rules for Congressional review and possible veto.”<sup>2</sup> This recommendation later became moot following *INS vs. Chadha* where the Supreme Court ruled that a one-house legislative veto was unconstitutional.<sup>3</sup> Indeed the REINS Act itself may violate this prohibition of a one-house legislative veto.

Pursuant to the REINS Act, if just one chamber votes against a resolution to approve a major rule, the rule will not take effect. Even more concerning, either chamber could simply refuse to bring a resolution to the floor to approve of the rule within the 70-day window, killing the regulation without even allowing a vote on it, giving either chamber a one-house legislative veto through inaction. While the committee report cites instances where legal scholars have said a process such as the one in this bill could be constitutional, significant uncertainty remains around that question. As Ronald M. Levin, Professor of Law at the Washington University Law School in St. Louis testified before the House Judiciary Committee, “there is reason to think that the Act might not survive constitutional scrutiny” since “the Act is intended to enable a single House of Congress to control the implementation of laws through the rulemaking process.”<sup>4</sup>

One practical effect of the REINS Act would be to discourage agencies from taking on major rulemakings in the first place and could grind the entire rulemaking process to a halt if they choose

<sup>1</sup> 5 U.S.C. §§ 801–808.

<sup>2</sup> 4 ACUS 63 (1977).

<sup>3</sup> *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

<sup>4</sup> Statement of Ronald M. Levin, William R. Orthwein Distinguished Professor of Law, Washington University in St. Louis, *H.R. 367 the REINS Act of 2013: Promoting Jobs, Growth, and American Competitiveness*, Hearing before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Regulatory, Commercial and Antitrust Law (March, 5, 2013).

to pursue rulemaking. The REINS Act would replace the current system's reliance on science, expertise and public process in developing rules with Congress' partisan considerations and the potential influence of industry lobbyists. Today the Federal rulemaking process relies on technical expertise, data gathering and analysis and input from stakeholders. These are areas of core competency and expertise for Federal agencies. Members of Congress simply do not have the technical and scientific expertise that agencies possess, especially since Congress defunded its own Office of Technology Assessment. As a result, agencies will be disinclined to put the multi-year effort into the development of major rules that would become mere recommendations that could be discarded through Congressional inaction in just 70 days.

The process for regulating toxic chemicals established by bipartisan and recently passed Frank R. Lautenberg Chemical Safety for the 21st Century Act is a perfect example of the deleterious effect the REINS Act would have on the regulatory process and the potential impact it could have on the health of Americans. Passage of that law was predicated on the notion that the Environmental Protection Agency needed more resources and clearer processes to accelerate its pace of rulemaking because the previous regulatory regime for identifying and regulating toxic chemicals was widely regarded as a failure.<sup>5</sup> However, if the REINS Act were to be enacted, it would allow Congress's political considerations to supersede the best scientific information available to determine the safety of new chemicals, determinations that nearly every Member of Congress is ill-equipped to make.

Supporters argue that the REINS Act is simply reinserting Congressional involvement in the rulemaking process. However, this argument willfully ignores Congress' critical role in the current process: the rules issued by a federal agency are based on underlying authority given the agency by Congress in legislation that directs such rulemaking in the first place. Should Congress wish to limit rulemaking, it can already do so by either enacting self-enforcing laws or being more prescriptive in legislation to limit agencies' flexibility rather than creating a potentially unconstitutional single-house veto for every major rule.

Additionally, Congress already has other tools to ensure effective oversight of agency regulatory actions, including the ability to control appropriations and conduct agency oversight. Should Congress wish to overturn a regulation, it does not need additional tools to do so; it can pass a law overturning the regulation or restrict funding to carry out the rule. Congress can also hold hearings to publicize its concerns with the rule. As we have seen this year, it can also disapprove final rules before they are implemented under the current Congressional Review Act process.<sup>6</sup>

Not only would S. 21 throw sand in the gears of rulemaking it would also throw sand in the gears of legislating. Congress currently struggles to fulfill its basic functions of passing budgets and thirteen appropriation bills annually. In fact it has been over 20 years sign the legislative branch was able to pass all of the appropriations bills on time.<sup>7</sup> In addition, Members of Congress intro-

<sup>5</sup> P.L. 114-182

<sup>6</sup> 5 U.S.C. § 801(b).

<sup>7</sup> <https://bipartisanpolicy.org/blog/can-congress-deliver-appropriations-bills-on-time/>

duced 10,078 bills in the 114th Congress, and sent 329 of those to President Obama. In the 113th Congress, Members introduced 8,911 bills and sent 282 to President Obama. It seems unlikely, then, that both chambers of Congress would act on the majority of the major rules presented for consideration.

Whatever we do here in Congress and on this Committee to reform the regulatory process should encourage reducing burdens and increasing transparency while achieving the greatest public benefit. It should be our goal to have the most efficient, effective, and transparent regulatory process possible, and to ensure that process results in common-sense regulations. We do not believe this bill would improve the regulatory process, and in fact would make the process far less efficient and insert additional political considerations into the process. For these reasons we strongly oppose S. 21 and urge our colleagues to join us in opposition.

#### VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 21 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### UNITED STATES CODE

\* \* \* \* \*

### TITLE 2—THE CONGRESS

\* \* \* \* \*

#### CHAPTER 20—EMERGENCY POWERS TO ELIMINATE BUDGET DEFICITS

\* \* \* \* \*

#### Subchapter I—Elimination of Deficits in Excess of Maximum Deficit Amount

\* \* \* \* \*

#### SEC. 907. THE BASELINE.

(a) \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) \* \* \*

(A) \* \* \*

\* \* \* \* \*

(D) \* \* \*

(E) *BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.—Any rules subject to the congressional approval procedure set forth in section 802 of chapter 8 of title 5, United States Code, affecting budget authority, outlays, or receipts shall be assumed to*

*be effective unless it is not approved in accordance with such section.*

\* \* \* \* \*

## TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

\* \* \* \* \*

### PART I—THE AGENCIES GENERALLY

\* \* \* \* \*

### CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

Sec.

801. Congressional review.

802. Congressional [disapproval] *approval procedure for major rules.*

803. [Special rule on statutory, regulatory, and judicial deadlines] *Congressional disapproval procedure for nonmajor rules.*

804. Definitions.

805. Judicial review.

806. [Applicability; severability] *Exemption for monetary policy.*

807. [Exemption for monetary policy] *Effective date of certain rules.*

[808. Effective date of certain rules.]

#### SEC. 801. CONGRESSIONAL REVIEW

(a)(1)(A) Before a rule [can] *may* take effect, the Federal agency promulgating such rule shall *publish in the Federal Register a list of information on which the rule is based, including data, scientific and economic studies, and cost-benefit analyses, and identify how the public can access such information online, and shall* submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule[, including whether it is a major rule; and];

(iii) [the proposed effective date of the rule.] *a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within subparagraphs (A) through (C) of section 804(2);*

(iv) *a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and*

(v) *the proposed effective date of the rule.*

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any[;], *including an analysis of any jobs added or lost, differentiating between public and private sector jobs;*

(ii) the agency's actions [relevant] *pursuant to sections 603, 604, 605, 607, and 609[;] of this title;*



(iii) the agency's actions **[relevant]** *pursuant* to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction **[in each House of the Congress]** by the end of 15 calendar days after the submission or publication date **[as provided in section 802(b)(2)]**. The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B) *and an assessment of whether the major rule imposes any new limits or mandates on private-sector activity.*

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect **[on the latest of—**

**[(A) the later of the date occurring 60 days after the date on which—**

**[(i) the Congress receives the report submitted under paragraph (1); or**

**[(ii) the rule is published in the Federal Register, if so published;**

**[(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—**

**[(i) on which either House of Congress votes and fails to override the veto of the President; or**

**[(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or**

**[(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).]** *upon enactment of a joint resolution of approval described in section 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.*

(4) **[Except for a]** A nonmajor rule**[, a]** rule shall take effect as **[otherwise]** provided by section 803**[law]** after submission to Congress under paragraph (1).

(5) **[Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.]** *If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either House of Representatives or the Senate.*

(b)(1) A *major* rule shall not take effect [(or continue), if] *unless* the Congress enacts a joint resolution of [dis]approval[, ] described under section 802[, of the rule].

(2) [A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.] *If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in subsection (a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.*

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a *major* rule [that would not take effect by reason of subsection (a)(3)] may take effect[, ] *for one 90-calendar-day period* if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the *major* rule should take effect because such rule is—

- (A) necessary because of an imminent threat to health or safety or other emergency;
- (B) necessary for the enforcement of criminal laws;
- (C) necessary for national security; or
- (D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 [or the effect of a joint resolution of disapproval under this section].

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

- (A) in the case of the Senate, 60 session days, or
- (B) in the case of the House of Representatives, 60 legislative days, before the date the Congress *is scheduled to* adjourn[s] a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 and 803 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying sections 802 and 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

- (i) such rule were published in the Federal Register [(as a rule that shall take effect)] on—
  - (I) in the case of the Senate, the 15th session day[, ]; or
  - (II) in the case of the House of Representatives, the 15th legislative day, after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

[(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.]

[(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.]

**SEC. 802. CONGRESSIONAL [REVIEW] APPROVAL PROCEDURE FOR MAJOR RULES**

(a)(1) For purposes of this section, the term “joint resolution” means only a joint resolution [introduced in the period beginning on the date on which the report referred to in] *addressing a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii) that—*[is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: “That Congress disapproves the rule submitted by the \_\_\_\_\_ relating to \_\_\_\_\_, and such rule shall have no force or effect.” (The blank spaces being appropriately filled in).]

(A) *bears no preamble;*

(B) *bears the following title (with blanks filled as appropriate): “Approving the rule submitted by \_\_\_\_\_ relating to \_\_\_\_\_”;*

(C) *includes after its resolving clause only the following (with blanks filled as appropriate): “That Congress approves the rule submitted by \_\_\_\_\_ relating to \_\_\_\_\_.”; and*

(D) *is introduced pursuant to paragraph (2).*

(2) *After a House of Congress received a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii), the majority leader of that House (or his or her respective designee) shall introduce (by request, if appropriate) a joint resolution described in paragraph (1)—*

(A) *in the case of the House of Representatives, within 3 legislative days; and*

(B) *in the case of the Senate, within 3 session days.*

(3) *A joint resolution described in paragraph (1) shall not be subject to amendment at any stage of proceeding.*

(b)[(1)] A joint resolution described in subsection (a) shall be referred [to the committees]in each House of Congress *to the committees having[with] jurisdiction[.] over the provision of law under which the rule is issued.*

[(2) For purposes of this section, the term “submission or publication date” means the later of the date on which—

[(A) the Congress receives the report submitted under section 801(a)(1); or

[(B) the rule is published in the Federal Register, if so published.]

(c) In the Senate, if the committee or committees to which [is referred] a joint resolution described in subsection (a) has *been referred have* not reported [such joint resolution (or an identical joint resolution)] *it* at the end of [20 calendar] *15 session* days after [the submission or publication date defined under subsection (b)(2)] *its introduction*, such committee or committees [may] *shall* be automatically discharged from further consideration of [such joint] *the* resolution [upon a petition supported in writing by 30 Members of the Senate, and such joint resolution] *and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which is was referred, or after such committee or committees have been discharged from further consideration of the resolution.*

(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred [has] *have* reported, or when a committee or committees [is] *are* discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than [10] 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further [to] limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) \* \* \*

(4) \* \* \*

(e) [In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

[ (1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

[ (2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.] *In the House of Representatives, if any committee to which a joint resolution described in subsection (a) has been referred has not reported it to the House at the end of 15 legislative days after its introduction, such committee shall be discharged from further consideration of the joint resolution, and it shall be placed on the appropriate calendar. On the second and fourth Thursdays of each month it shall be in order at any time for the*

*Speaker to recognize a Member who favors passage of a joint resolution that has appeared on the calendar for at least 5 legislative days to call up that joint resolution for immediate consideration in the House without intervention of any point of order. When so called up a joint resolution shall be considered as read and shall be debatable for 1 hour equally divided and controlled by the proponent and an opponent, and the previous question shall be considered as ordered to its passage without intervening motion. It shall not be in order to reconsider the vote on passage. If a vote on final passage of the joint resolution has not been taken by the third Thursday on which the Speaker may recognize a Member under this subsection, such vote shall be taken on that day.*

(f)(1) If, before [the passage by one House of] *passing* a joint resolution [of that House] described in subsection (a), [that] one House receives from the other [House] a joint resolution [described in subsection (a), then the following procedures shall apply:] *having the same text, then—*

[(1)](A) The joint resolution of the other House shall not be referred to a committee[.]; *and*

[(2)] With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

[(A)](B) the procedure in [that] *the receiving* House shall be the same as if no joint resolution had been received from the other House[; but]

[(B)] *until* the vote on [final] passage, [shall be on] *when* the joint resolution [of] *received from* the other House[.] *shall supplant the joint resolution of the receiving House.*

(2) *This subsection shall not apply to the House of Representatives if the joint resolution received from the Senate is a revenue measure.*

(g) *If either House has not taken a vote on final passage of the joint resolution by the last day of the period described in section 801(b)(2), then such vote shall be taken on the date.*

[(g)](h) This section and section 803 [is] *are* enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such [it is] *are* deemed [a] *to be* part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it [supersedes] *superseding* other rules only [to the extent that it is inconsistent with such rules] *where explicitly so; and*

(2) with full recognition of the constitutional right of either House to change the rules (so far as *they* [relating] *relate* to the procedure of that House) at any time, in the same manner[,], and to the same extent as in the case of any other rule of that House.

**SEC. 803. [SPECIAL RULE ON STATUTORY, REGULATORY, AND JUDICIAL DEADLINES] CONGRESSIONAL DISAPPROVAL FOR NONMAJOR RULES**

[(a)] In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date

of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).】

*(a) For purposes of this section, the term ‘joint resolution’ means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: ‘That Congress disapproves the nonmajor rule submitted by the \_\_\_\_\_ relating to \_\_\_\_\_, and such rule shall have no force or effect.’ (The blank spaces being appropriately filled in).*

【(b) The term “deadline” means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.】

*(b) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.*

*(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.*

*(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.*

*(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.*

*(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.*

*(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint*

resolution described in subsection (a) shall be decided without debate.

(e) In the Senate, the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date; or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

#### SEC. 804. DEFINITIONS

For purposes of this chapter[—]:

(1) \* \* \*

(2) The term “major rule” means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) an annual effect on the economy of \$100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

【The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.】

(3) The term “nonmajor rule” means any rule that is not a major rule.

【(3)】 (4) The term “rule” has the meaning given such term in section 551, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(5) *The term “submission or publication date”, except as otherwise provided in this chapter, means—*

(A) *in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); and*

(B) *in the case of a nonmajor rule, the later of—*

(i) *the date on which the Congress receives the report submitted under section 801(a)(1); and*

(ii) *the date on which the nonmajor rule is published in the Federal Register, if so published.*

#### **SEC. 805. JUDICIAL REVIEW**

(a) *No determination, finding, action, or omission under this chapter shall be subject to judicial review.*

(b) *Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.*

(c) *The enactment of a joint resolution of approval under section 802 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.*

#### **[SEC. 806. APPLICABILITY; SEVERABILITY**

[(a) This chapter shall apply notwithstanding any other provision of law.

[(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.]

#### **[SEC. 807.] SEC. 806. EXEMPTION FOR MONETARY POLICY**

*Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.*

#### **[SEC. 808.] SEC. 807. EFFECTIVE DATE OF CERTAIN RULES**

Notwithstanding section 801—

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping[.]; or

(2) any rule *other than a major rule* which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.